



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

Crl.A.No. 325 of 2017

Vijayakumar

... Appellant

Vs.

State of Tamilnadu,
Represented by the Inspector of Police,
A.W.P.S, Gingee,
Villupuram District. (Cr.No. 13/2015)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records relating to the proceedings in SC.No. 206 of 2016 on the file of the learned Court of Sessions Judge, Magalir Needhi Mandram, (Fast Track Mahila Court) Villupuram to set aside the order of conviction dated 12.06.2017 and to set the appellant at liberty.

For Appellant : Mr. M.Devaraj

For Respondents : Mrs. G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

The sole accused who was tried in S.C.No. 206 of 2016 by the learned Sessions Judge, Magalir Needhi Mandram (Fast Track Mahila Court), Villupuram has preferred appeal for the offences under Sections



376, 493, 354(c) and 506(ii) of IPC, in which he was convicted and sentenced to undergo rigorous imprisonment of three years and to pay a fine of Rs.3000/- in default, to undergo further period of simple imprisonment of three months for the offence under Section 506(ii) of Indian Penal Code and acquitted under Section 376, 493 and 354(c) of IPC.

2. The case of the prosecution in brief is given hereunder as follows:-

- The victim and the accused were friends from their school days.
- Prior to the date of occurrence two years before, the accused gave a promise to marry the victim. Both had physical intimacy for two years.
- When the family members of the victim were seeking for suitable alliance for her, the accused married the prosecutrix secretly on 11.07.2015 at Iyyanar Koil.
- When the victim went to Chennai on 18.07.2015 to live with him, the accused threatened the victim that he would upload the video recording of the victim in the Face book which he had captured while she was taking bath. Hence, accused was charge sheeted for the offenses punishable under Sections 420, 376, 354(c) of Indian Penal Code.



3. The victim lodged a complaint (Ex.P1) before the Police station Gingee and the Police Constable 2077 Jayaseeli assigned CSR.No. 203/2015 in community service register and later the case was registered (FIR/Ex.P.5) in Crime No. 13/2015 under Sections 417, 376, 354(c) of IPC by the Inspector of Police, A.W.P.S, Gingee.

4. The Investigating officer took up the case for investigation, went to the place of occurrence and prepared observation Mahazer (Ex.P6) and Rough Sketch (Ex.P7) in the presence of witnesses. She examined witnesses Pushpa thanaraklin mary (P.W.1), Suguna (P.W.7), Kumar (P.W.3), Angelin (P.W.2), S.Arokiyadoss (P.W.8) and recorded their statements. The accused was not arrested by the investigating officer as order of Anticipatory Bail was obtained by the accused in the Criminal OP.24918 of 2015 dated 14.10.2015.

5. In continuation, upon requisition, potency certificate (Ex.P8) and age certificate (Ex.P9) for the accused were obtained from the medical officer. Upon requisition, on 05.11.2015 the victim was sent for medical examination. The swab and smear test report were obtained (Ex.P10). Medical officer who examined the accused and the victim were enquired on 02.02.2016 and the medical reports were obtained. She recorded the



statements of police constables who took the victim and the accused to the Government Hospital for medical examination. The case was altered from Sections 376, 471, 354(c) of Indian Penal Code to Sections 376, 420, 354(c) of Indian Penal Code and laid the final report against the accused.

6. On appearance of the accused before the Trial Court, upon consideration, charges were framed against the accused under Sections 376, 493, 506(ii) and 354(c) of IPC. When the accused was questioned, he pleaded not guilty and denied the charges. In order to substantiate the charges, on the prosecution side, 13 witnesses were examined and 11 exhibits were marked. No witness was examined by the defence side.

7. Upon consideration, the trial Court convicted and sentenced the accused as mentioned supra. Aggrieved, the accused has preferred this appeal.

8. Learned counsel appearing for the appellant would strenuously contend that when the accused was acquitted under Section 376, 493, 354(c) of IPC then charge under section 506(ii) of IPC cannot stand alone. It is his further argument that insofar as threatening is concerned, it is said to be made over phone. There is no specific date mentioned in the complaint. He would further contend that, cellphone should have been



seized from the victim.

9. The learned Additional Public Prosecutor would vehemently argue that the prosecution has proved the charge under Section 506(ii) of IPC beyond reasonable doubt through the evidence of P.W.1, P.W.5, P.W.7 and P.W.10.

10. Pushpa Thanaraklinmary, P.W.1 has spoken about the occurrence. Among Angeline P.W.2, Kumar P.W.3, Sureshkumar P.W.4, Edwinrani P.W.5 (Sister of P.W.1), victim's brother's wife Suguna P.W.7, the relatives of victim Sakthivel P.W.9, Pushpa Danaheldamery (another sister of victim) P.W.10, Jagadeesan P.W.11(relative), P.W.5, P.W.7 and P.W.10 have spoken about the occurrence. Dr.Gitanjali, Assistant Professor, Forensic Medicine was examined as P.W.12, and she conducted medical examination to the victim and issued medical examination report (Ex.P3), Investigating officer is P.W.13.

11. It is the evidence of P.W.1 that “...எதிரி முதலில் பாத்ரூமிற்கு சென்று குளித்துவிட்டு வந்தார். அதன்பிறகு தன்னுடைய மொபைல் போனில் கேமராவை ஆன் செய்து பாத்ரூமில் வைத்துவிட்டு வந்துள்ளார். நான் குளிக்க சென்றபோது அந்த காட்சிகள் அந்த செல்போனில் பதிவாகியிருக்கிறது. அந்த விவரம் எனக்கு தெரியவில்லை, எதிரி அந்த செல்போனை எடுத்துக்கொண்டு சாப்பிட்டு விட்டு சென்றுவிட்டார். இரண்டு நாட்கள் கழித்து எதிரி என்னிடம் செல்போனில் நான் குளிக்கும் காட்சி பதிவாகியுள்ளதை சொன்னார். நான் எதிரியிடம் அழுதேன்.



அப்போது எதிரி அந்த காட்சிகளை டெலிட் செய்துவிடுவதாக சொன்னார்...

....எனக்கு மாதவிடாய் வரவில்லை என்று சொன்னேன். அப்போது எதிரி கருகலைப்பு மாதத்திரை வாங்கிக்கொடுத்தார். மாதவிடாய் வருகிறதா என்று கேட்டார். இல்லை என்றால் மருத்துவமனைக்கு சென்று பார்க்கசொன்னார். அந்த செல்போன் பதிவை அழிக்க சொன்னேன். தாலியை கழட்டி போட்டுவிடும் படி சொன்னார். அவ்வாறு செய்யவில்லை என்றால் நான் குளிக்கும் காட்சியை நெட்டில் போட்டுவிடுவதாக சொன்னார். நான் உடனே அழுதேன்.....

.....எனக்கு நலப்பிரச்சினை இருந்தது. அப்போது புதிய தலைமுறை ரிப்போர்ட்டர் ஜோதி என்பவரிடம் அதுகுறித்து ஆலோசனை கேட்டேன். அவரிடம் நான் எதிரி பற்றி சொன்னேன். அவர் விழுப்புரம் கண்காணிப்பாளரிடம் சென்று போன் செய்து கொடுப்பதாக சொன்னார். அப்போது காவல் துறை கண்காணிப்பாளர் புகார் கொடுக்க சொன்னார். நான் புகார் கொடுக்கமாட்டேன். வீட்டில் தெரிந்தால் பிரச்சனையாகிவிடும் என்று சொன்னேன். அவர் கெடரிலுள்ள ஸ்ரீனிவாசன் என்ற உதவி ஆய்வாளரிடம் தகவல் சொல்லி எதிரி என்னை மிரட்டும் விவரத்தை சொல்லியுள்ளார். அவர் எதிரியிடம் பேசியபோது எதிரி குளியல் காட்சியை டெலிட் செய்துவிடுவதாக அவரிடம் சொல்லியுள்ளார்..”

It appears that P.W.1 and the accused were in physical relationship for years together.

12. P.W.2, Angelin and P.W.4 Sureshkumar, have not supported the prosecution case and they were treated as hostile witness. P.W.6 Arokiyadoss, P.W.8 S.Arokiyadoss, P.W.9 Sakthivel have also turned hostile. It is the testimony of P.W.3 Kumar, the Panchayat President of Tatnagar, Villupuram that on request by the victim, along with two persons from the victim side, went to the accused house and explained about the



occurrence to the parents of the accused. The father and mother of the accused told him that they would consult the accused and thereafter they would inform him. But, they did not respond to his request. Afterwards, the Complaint was lodged by the victim.

13. P.W.5 younger sister of victim Edvinrani apart from the other details has specifically deposed that “....என் தங்கையிடம் நேராக பாண்டிச்சேரிக்கு வரும்படிசொன்னேன். அவரை விசாரித்தபோது எதிரி தன்னை குளிக்கும்போது புகைப்படம் எடுத்துவிட்டதாகவும், அதை காட்டி மிரட்டுவதாகவும் சொன்னார்....”

14. P.W.7 Suguna who is brother's wife of victim would state that “....ஒரு நாள் அ.சா.1 போனில் பதட்டமாக பேசிக்கொண்டு இருந்தார். அப்போது அ.சா.1 அதுபோல் எதுவும் கிடையாது, பேஸ்புக்கில் விட்டுவடாதீங்க என்று சொன்னார். அதை நான் கேட்டேன்....”

15. P.W.10 Pushpa Danahelda Mary, another sister of PW1 has deposed that “....வீட்டில் பிரச்சனையாக இருக்கிறது வா என்று போன் செய்தார்கள். நான் வீட்டிற்கு சென்றபோது என் அண்ணன், அக்கா எல்லோரும் இருந்தார்கள். நான் என்ன பிரச்சினை என்று கேட்டேன். அப்போது அ.சா.1 அழுதுகொண்டிருந்தார். அப்போது எதிரி என் அக்கா குளிக்கும்போது செல்போனில் படம் எடுத்துவிட்டதாக சொன்னார். பேஸ் புக்கில் போடுவதாக சொல்லி அவரை மிரட்டி கற்பழித்துவிட்டதாக சொன்னார். கல்லாங்குத்து என்ற இடத்தில் அவரை மிரட்டி தாலி கட்டிவிட்டதாக சொன்னார்....”

16. In order to have a proper understanding, it is relevant to extract the charge as regards under Sections 506(ii) of IPC 3rd charge is as follows:-



“....மேற்படி சம்பவத்தின் தொடர்ச்சியாக எதிரியான நீவிர் 1வது சாட்சி எதிரியான உமக்கு போன் செய்தபோது எதிரியான நீவிர் நீ இனி போன் செய்தால் நீ குளிக்கும்போது எடுத்த வீடியோ படத்தை பேஸ்புக்கில் போட்டுவிடுவேன் என்று பெண்ணின் கற்பின்மை பழியை கூறி மிரட்டியதால் இ.த.ச 506(2) பிரிவின்படி தண்டிக்கதக்கதும். இந்நீதிமன்றத்தால் விசாரனை செய்யத்தக்கதுமான குற்றமொன்றை செய்துள்ளீர்....”

17. The offence of criminal intimidation is defined in Section 503 which is extracted hereunder:-

“ Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation—*A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.*”

18. Existence of the intention is essential to the offence. The threat referred to in this Sections must be the threat uttered with the intention. It is being communicated to the person threatened for the purpose of influencing mind. Therefore, the ultimate point is intention of the accused that is to be



considered in deciding as to whether what he uttered, comes within the meaning of Section 503 of Indian Penal Code.

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19. On perusal of Ex.P1 complaint, she has stated about the details of criminal intimidation. Whether the accused uttered as alleged by the victim and if at all it is uttered, was it done with mensrea has to be seen. Therefore, in order to constitute the offence under Section 506(ii) of Indian Penal Code, it is to be shown that the person charged actually threatened another with intention to cause alarm. In this regard, in the complaint, P.W.1 has spoken about the said details and during the examination of P.W.1, complainant has explained about it sufficiently.

20. From deep analysis of the evidence of P.W.1, it appears that in the year 2013, the accused wanted to speak to her and the portion of the evidence of P.W.1 has been culled out is as follows:-

“....2013ம் ஆண்டு அவருக்கு போலீசில் வேலை கிடைக்கவில்லை. அவர் வருத்தமாக இருந்தார். நான் அவரை சமாதானப்படுத்தினேன். அப்போது நான் விழுப்புரத்தில் அக்காவுடன் வாடகை வீட்டில் இருந்தேன். மீண்டும் என்னை உடலுறவுக்கு அழைத்தபோது மறுத்துவிட்டேன். அப்போது நான் வீட்டில் பேசுகிறேன். என் மீது நம்பிக்கை இல்லையா என்று கேட்டு என்னை மீண்டும் கட்டாயப்படுத்தி என்னுடன் உடலுறவு கொண்டார். எதிரி முதலில் பாத்ரூமிற்கு சென்று குளித்துவிட்டு வந்தார். அதன்பிறகு தன்னுடைய மொபைல் போனில் கேமராவை ஆன் செய்து பாத்ரூமில் வைத்துவிட்டு வந்துள்ளார். நான் குளிக்க சென்றபோது அந்த காட்சிகள் அந்த



செல்போனில் பதிவாகியிருக்கிறது. அந்த விவரம் எனக்கு தெரியவில்லை. எதிரி அந்த செல்போனை எடுத்துக்கொண்டு சாப்பிட்டு விட்டு சென்றுவிட்டார். இரண்டு நாட்கள் கழித்து எதிரி என்னிடம் செல்போனில் நான் குளிக்கும் காட்சி பதிவாகியுள்ளதை சொன்னார். நான் எதிரியிடம் அழுதேன்....”

21. In continuation, it is the evidence of P.W.1, that in the year 2015 (i.e) after two years, she told the accused that she did not get her periods, then the conversions were recorded by P.W.1. The accused told P.W.1 to delete the same and to remove the Thali. If she did not chose to do it, he threatened her that he would upload her bathing recordings in the Internet. Therefore, these portions of evidence of P.W.1 would depict the fact that he did the same with mens rea to intimidate her to do something or not to do something which necessarily has caused alarm to P.W.1. She rushed to one Jothi who was the reporter of one private television channel and consulted him and thereafter, it appears that, this matter was taken up to the Superintendent of Police. Though, P.W.1 was advised to lodge a complaint against the accused, she refused to do the same. Then this was informed to one Sub Inspector of Police and he told the accused to delete the cellphone recordings. She went to Chennai and rang up to him. As he did not attend to her phone call, she lodged a complaint.

22. The Hon'ble Supreme Court of India in the case of **Romesh**



Chandra Arora -vs- State of Punjab reported in ***AIR 1960 SC 154***, held that whether the appellant was charged and convicted for committing criminal intimidation by threatening victim and his daughter with injury to their reputation by publication of indecent photographs of the daughter with intention to cause alarm to them. The evidence showed that the sole purpose was to force the victim to pay hush money.

23. From the careful perusal of the evidence of aforesaid witness, it is discernible that intention of the accused must be to cause alarm to the victim to the effect that she should not demand him to live a married life. He has intimidated her by stating that he would upload the video taken through cellphone thereby, threatened her to impute the chastity of the complainant. Of course, the intention could only be gathered through the evidence of P.W.1 and other witnesses. As the allegations put forth by P.W.1 covers the period from 2013 to 2015 and so many times the accused has intimidated that he would upload the video recordings and non mentioning of specific date would not render her evidence has not acceptable. The supporting witnesses P.W.5, P.W.7 and P.W.10 are not enemical to the accused. Testimony of the prosecution witnesses are natural, cogent, contextual and trust worthy.



24. Therefore, it clearly manifests from the evidence of prosecution witness that the accused had intimidated the victim that if she did not adhere to his words and commands, he would upload the victim's cellphone video recordings in the Face book. Therefore, it is clearly evident that with pucca mensrea, he had threatened the victim which amounts to criminal intimidation. Since, the accused was acquitted under charges under section 376, 493 and 354, the charges under Section 506(ii) cannot stand alone will not hold water for the reason that each offence has to be looked in a proper prospective independently.

25. In fine, the Criminal Appeal stands dismissed and in the result, the sentence and conviction passed under Section 506(ii) of IPC by the Trial Court stands confirmed. The Trial Court shall secure the accused in order to serve the sentence by issuing warrant within a month from the date of receipt of copy of this Judgment.

28.02.2024

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Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



To

1. The VI Additional Sessions Court,
Chennai
2. The Inspector of Police,
J-5, Sasthri Nagar Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
VR Section, High Court, Madras.



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